

SENATE BILL 2164
By Finney

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 2, relative to assisted reproduction.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 2, Part 3, is amended by
adding the following language as new sections:

36-2-323.

(a) As used in this section or § 36-2-324, unless the context otherwise requires:

(1) "Assisted reproduction" means a method of causing pregnancy other
than sexual intercourse. The term includes:

- (A) Intrauterine insemination;
- (B) Donation of eggs;
- (C) Donation of embryos;
- (D) In vitro fertilization and transfer of embryos; and
- (E) Intracytoplasmic sperm injection;

(2) "Commissioning couple" means the intended mother and father of a
child who will be conceived by means of assisted reproduction technology using
the eggs or sperm of at least one of the intended parents where the fertilized egg
and sperm are preserved for later implantation in the intended mother;

(3) "Donor" means an individual who produces eggs or sperm used for
assisted reproduction, whether or not for consideration. "Donor" does not include
a husband who provides sperm, or a wife who provides eggs, to be used for
assisted reproduction by the wife;

(4) "Egg" means the unfertilized female reproductive cell;

(5) "Embryo" means the cell that results from the union of the egg and the sperm or any subsequent division thereof;

(6) "Fertilization" means the initial union of an egg and sperm; and

(7) "Sperm" means the male reproductive cell.

(b) Except as provided in subsection (d), (e) or (f), a donor is not a parent of a child conceived by means of assisted reproduction.

(c) This section does not apply to the birth of a child conceived by means of sexual intercourse.

(d)

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife consents to assisted reproduction with sperm donated by a man not her husband, then the husband is treated in law as if he is the natural father of a child thereby conceived.

(2) If, under the supervision of a licensed physician and with the consent of her husband, a wife consents to assisted reproduction with eggs donated by another woman, to conceive a child for herself, not as a surrogate, then the wife is treated in law as if she is the natural mother of a child thereby conceived.

(3) Both the husband's and the wife's consent must be in writing and signed by each of them. The physician shall certify their signatures and the date of the assisted reproduction and shall file the consents with the office of vital records, where they shall be kept confidential and in a sealed file; however, the physician's failure to do so does not affect the father and child relationship or the mother and child relationship. All papers and records pertaining to the assisted reproduction, whether part of the permanent record of a court or of a file held by

the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(4) Failure of the husband to sign such a consent, before or after the birth of the child, does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treated the child as their own.

(e)

(1) A donor of eggs provided to a licensed physician for use in an assisted reproduction process of attempting to achieve a pregnancy in a woman other than the donor is treated in law as if the donor is not the natural mother of a child thereafter conceived unless the donor and the woman who gives birth to a child as a result of such assisted reproduction process agree in writing that the donor is to be a parent.

(2) A woman who gives birth to a child conceived through an assisted reproduction process under the supervision and with the assistance of a licensed physician is treated in law as if she is the natural mother of the child unless an agreement in writing signed by the egg donor, the sperm donor, or both the egg donor and the sperm donor and the woman giving birth to the child states otherwise.

(3)

(A) The consents must be in writing and signed by the egg donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the egg's harvest, identify the subsequent medical procedures undertaken, and identify the intended parents.

(B) If, as provided in subdivision (2), the assisted reproduction process includes both an egg and a sperm, then the consents must be in writing and signed by the egg donor and the sperm donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the egg's harvest, and the date of the sperm donation, identify the subsequent medical procedures undertaken, and identify the intended parents.

The physician shall certify their signatures and the date of the assisted reproduction and shall file the consents with the office of vital records where they shall be kept confidential and in a sealed file. All papers and records pertaining to the assisted reproduction, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(f)

(1) A donor of sperm provided to a licensed physician for use in an assisted reproduction process of attempting to achieve a pregnancy in a woman is treated in law as if the donor is not the natural father of a child thereafter conceived unless the donor and the woman who gives birth to a child as a result of such assisted reproduction process consent in writing that the donor is to be a parent.

(2) Such consents must be in writing and signed by the sperm donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the sperm donation, identify the subsequent medical procedures undertaken, and identify

the intended parents. The physician shall file the consents with the office of vital records where they shall be kept confidential and in a sealed file. All papers and records pertaining to the assisted reproduction, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(g) If there is no signed consent form, the nonexistence of the father-child relationship shall be determined pursuant to § 36-2-304.

(h)

(1) If a marriage is dissolved before placement of egg, sperm, or embryo, then the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a dissolution of marriage, the former spouse would be a parent of the child.

(2) The consent of a former spouse to assisted reproduction may be withdrawn by that individual in a record at any time before placement of egg, sperm, or embryo.

(i) If a spouse dies before placement of egg, sperm, or embryo, then the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased spouse would be a parent of the child.

36-2-324(a). A commissioning couple and the treating physician shall enter into a written agreement that provides for the disposition of the commissioning couple's eggs, sperm, and embryos which are stored for later implantation, in the event of a divorce, the death of a spouse or any other unforeseen circumstance; provided, that in the case of an embryo or embryos, one (1), and only one (1), of the members of the commissioning couple shall be designated as the legal custodian of the embryo or embryos.

(b)

(1) Absent a written agreement, any remaining eggs or sperm shall remain under the control of the party that provides the eggs or sperm.

(2) Absent a written agreement, decision making authority regarding the disposition of embryos shall reside jointly with the commissioning couple.

(3) Absent a written agreement, in the case of the death of one member of the commissioning couple, any eggs, sperm, or embryos shall remain under the control of the surviving member of the commissioning couple.

(4) A child conceived from the eggs or sperm of a person or persons who died before the transfer of their eggs, sperm, or embryos to a woman's body shall not be eligible for a claim against the decedent's estate unless provision has been made for the child in the decedent's will.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.